

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

UNITED STATES OF AMERICA ) DOCKET NO. 3:16-CR-200  
 )  
 )  
vs. )  
 )  
BILLY DARRYL FLOYD, )  
 )  
Defendant. )  
\_\_\_\_\_  
)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MAX O. COGBURN, JR.  
UNITED STATES DISTRICT COURT JUDGE  
MARCH 20, 2017

APPEARANCES:

On Behalf of the Government:

GREGORY P. BAILEY, ESQ.  
MICHAEL P. HATZIMICHALIS, ESQ.  
U.S. Department of Justice, Tax Division  
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On Behalf of the Defendant:

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Official Court Reporter  
United States District Court  
Charlotte, North Carolina

1                   P R O C E E D I N G S

2                   (Court resumed at 2:04 p.m.)

3                   THE COURT: All right. We've got a couple of things  
4 moving here. We've got -- Mr. Floyd, now you were -- first  
5 let me ask counsel. You were appointed in this case. You are  
6 the...

7                   MS. GEBRE-EGZIABHER: Yes, Your Honor.

8                   THE COURT: And so you can't just get rid of your  
9 lawyer. You have to -- by sending a letter I don't need it  
10 anymore.11                  Do you want another lawyer or do you want to do this  
12 on your own?13                  THE DEFENDANT: Am I here under special visit today?  
14 Special appearance?15                  THE COURT: Yeah, you are. You're here today  
16 primarily -- originally we set this hearing up and  
17 notification for the hearing in order to determine whether or  
18 not you understood that -- your plea offer. They were making  
19 absolutely sure that you understood that if you were  
20 convicted, you might receive a more severe sentence and that's  
21 because the -- we've had defendants claiming, well, I never  
22 knew I could have gotten that good a plea before I went to  
23 trial. So they now try to -- now everybody wants everybody  
24 to -- pretty soon we'll send everybody to law school before  
25 they can take a plea.

1           But right now the question is, were you offered a  
2 plea in this case? That's what we came for. But in doing  
3 that we found out that you sent a letter -- and this happens.  
4 People get cross ways and they send letters. And it's one of  
5 those things that -- you're relieved as of March 8th. You're  
6 not acting in my best interest nor does it appear you plan to  
7 work for my best interest, and on and on and on.

8           So what do you want to do? Right now you're going  
9 to trial. You've got a good trial lawyer with you. What are  
10 you wanting to do here?

11           THE DEFENDANT: Your Honor, is it possible I could  
12 see you in chambers?

13           THE COURT: No, we have to -- we only can do this  
14 stuff in open court. I can -- I don't know what your -- what  
15 the problem is. I do know you've got a good lawyer. That I  
16 know. I also know that defendants -- good lawyers and  
17 defendants, good defendants, get cross ways with each other.  
18 Sometimes it reaches parts where we have to do something.

19           But you have to be very, very careful because if you  
20 get rid of one lawyer and the Court gives you another lawyer,  
21 you might think maybe I better have that other one back, and  
22 we don't just keep giving lawyers until you get one that you  
23 think is representing you the way you ought to be represented.  
24 That's what happens in these appointed cases.

25           So tell me what you want to do.

1                   THE DEFENDANT: I'd like to settle the matter right  
2 now. Is it possible we can settle right now?

3                   THE COURT: I don't know. First I've got to make  
4 sure you're okay with your lawyer because -- in her  
5 negotiations for you. The purpose -- there's been a plea  
6 offer in the case. I don't know what the offer is. But I  
7 guess what I'm supposed to do in this hearing is to find out  
8 if it was given to you by your lawyer.

9                   Tell me what the government wants here.

10                  MR. BAILEY: Yes, Your Honor. The government is  
11 happy to put on -- orally on the record the series of written  
12 pleas that we've made the defendant and the lack of response  
13 that we have to date, if the Court wants us to go through each  
14 one and the differences between that.

15                  THE COURT: Yeah, if you would, if you would do  
16 that. Let's put it on the record.

17                  MR. BAILEY: Your Honor, on October 6th, 2016, the  
18 government provided a written plea -- proposed plea agreement  
19 to defense counsel that was a plea of guilty to count one of  
20 the indictment, which is 26 U.S.C. Section 7212(a), which  
21 allowed -- which agreed to a loss amount of \$109,086, a  
22 level -- a sentencing level of 16, plus 3 -- minus 3 points  
23 for acceptance, which would be a sentencing level of 13, which  
24 will lead, if he was criminal history category I, to a  
25 sentencing range of 12 to 18 months' imprisonment which was

1 zone C.

2 Comparing that to the guidelines for a trial  
3 conviction at which the government believes it could prove a  
4 sentencing loss of \$660,946 would be a sentencing level 20,  
5 which would be a zone D sentence of 33 to 41 months'  
6 imprisonment.

7 A second written plea agreement proposal was then  
8 submitted to defense counsel after negotiations on January 26,  
9 2017, at which point the sentencing guidelines were changed to  
10 2J1.2(a) under the same count one, 7212(a). The tax loss was  
11 removed and conduct that did not affect the tax loss was the  
12 only conduct that would be admitted to, which would put the  
13 sentencing level at a 14, minus 2 for acceptance, which would  
14 put Mr. Floyd at a level 12 for sentencing, again assuming  
15 criminal history category I, would be a 10 to 16 month  
16 sentence also in zone C.

17 Both of those plea offers have gone  
18 unacknowledged -- were acknowledged by defense counsel, but we  
19 have not received affirmative or negative answers to either  
20 offer.

21 THE COURT: Okay. And I guess what I'm -- what we  
22 need to know, Mr. Floyd, is did you receive those plea  
23 offers?

24 THE DEFENDANT: Your Honor, I have not received the  
25 plea offers, if I'm still here under special appearance. Am

1 I?

2 THE COURT: Well, yeah. I mean, you're here under  
3 appearance. I mean --

4 THE DEFENDANT: No, special appearance. I was -- I  
5 was invited here under special appearance under special  
6 request today. And I'm here to settle the matter.

7 THE COURT: Well, you're here because it was on the  
8 calendar and everybody was supposed to be here for this  
9 hearing and then nobody showed up and so we got the -- that's  
10 why you ended up -- these folks were down from Washington, and  
11 so we took whatever efforts we could to get you noticed into  
12 this hearing.

13 THE DEFENDANT: Your Honor, like I said, I'm here  
14 under special appearance if that's okay with you.

15 THE COURT: I don't know what special appearance  
16 means.

17 THE DEFENDANT: There was a mix up -- there was a  
18 mix up under my standing, if that's okay with you. But I do  
19 not wish not to -- to waste the Court's time. I can --

20 THE COURT: Let me just say this. There's no --  
21 there's no such thing as special appearance. You're appearing  
22 because you need to be here and that kind of thing -- I mean,  
23 there may be -- there's -- there are folks who use different  
24 terminology that they think is magic words kind of that get  
25 them through these things and it's not. You're either here to

1 try -- you're here today just to see if you got these plea  
2 offers. And if you did, then -- and don't want to take them,  
3 that's fine. And if you didn't, then you need to be able to  
4 think about them and see if it's something that you want to  
5 do.

6 THE DEFENDANT: Is it a problem if I could give it  
7 some consideration --

8 THE COURT: No.

9 THE DEFENDANT: -- to understand?

10 THE COURT: No.

11 THE DEFENDANT: I don't understand under --

12 THE COURT: You can --

13 THE DEFENDANT: -- under what's going on.

14 THE COURT: You can -- you can -- there's no problem  
15 with you having time to think about these. What I'll need is  
16 a motion to continue to a date certain for this to come up for  
17 either plea or trial, at which time it would come up for plea  
18 or trial.

19 THE DEFENDANT: Is it okay if I give you a notice?

20 THE COURT: A notice of what?

21 THE DEFENDANT: A chance to consider.

22 THE COURT: I don't need -- I don't need a notice of  
23 that. I just need a continuance. You automatically can  
24 consider these things.

25 Let me -- Mr. Floyd, let me just say this. I really

1 don't know what -- where you get your information, but there  
2 are groups that come out with all of this information and it's  
3 been highly unsuccessful nationwide in getting anybody  
4 anything. There's some that say that if they use a dot in  
5 their name, they're another country and can't be taxed.  
6 The -- it's going to fail in this country. I mean, we do --  
7 we probably pay more taxes than we want to, but there's no  
8 special appearances. There's no notice to us. There are no  
9 liens you put against the government for all these things.  
10 All these things that people are talking about, I guess they  
11 get money for doing it, but they're not telling the truth to  
12 folks like you and you end up getting yourself into a fix, and  
13 I don't want that to happen. I just want you to be able to do  
14 what you need to do.

15 If you're requesting time to consider the offers  
16 that the government is giving you in this case, I will give  
17 you one more continuance to do that because they have now  
18 stated on the record what those are. And both of those are  
19 zone C and you can find out -- your lawyer there knows what a  
20 zone C sentence might entail. And they have indicated -- and  
21 they've indicated to you what they believe the sentences would  
22 be. And there's a possibility you could receive a bigger  
23 sentence if you go to trial. There's a possibility you  
24 wouldn't receive a bigger sentence. It's up to the Court to  
25 sentence you.

1           But there's none of this -- there's no special  
2 notice out there. Anybody that's telling you these kinds of  
3 things are -- on special appearance or anything like that are  
4 really not giving you good information that helps you. And I  
5 just want you to have all the information. Then you have to  
6 talk it over with your lawyer or somebody and make a decision.

7           It doesn't matter whether I like -- if I get charged  
8 with something, it doesn't matter whether I like the charge  
9 just like it doesn't matter whether you like the charge. You  
10 have to deal with where you are and what they say. And if it  
11 goes to a jury, a jury will make a determination of guilt or  
12 innocence and they'll make it based on what they hear. They  
13 believe what they believe. But you do get a jury trial.

14           THE DEFENDANT: Judge, I appreciate your kindness  
15 and your offer, but I'm requesting some time to consider all  
16 the issues involved. Once again, I would like to settle the  
17 case, and once again asking your favor to do what's right.

18           THE COURT: All right. I can -- if you're moving --  
19 if you're going to move to continue, we'll need to also get  
20 this attorney issue out of the way, but you have to move to  
21 continue --

22           THE DEFENDANT: I understand. I'm not making a --

23           THE COURT: You have to move to continue the case to  
24 consider the offer.

25           THE DEFENDANT: I'm not making a motion.

1                   THE COURT: Okay.

2                   THE DEFENDANT: I'm not making a motion. I'm making  
3 a notice.

4                   THE COURT: Then we're going -- when this trial is  
5 over, we'll try you on this case.

6                   THE DEFENDANT: Um...

7                   THE COURT: If you're not ready -- if you're not  
8 ready -- what happens is when a defendant is not ready, they  
9 say, I need more time and would you continue the case. I'm  
10 not going to get caught up in some tax protester game. I'm  
11 not getting caught up in a tax protester game. We're going to  
12 follow the rules of the United States of America. There are  
13 plenty of other countries out there they can move to if they  
14 want to. But if you're in the United States of America as a  
15 United States citizen, you're going to follow the United  
16 States' rules. And the tax protesters have failed across this  
17 country with attempts to avoid that.

18                  Now, some of them are not guilty and have problems  
19 because instead of trying to beat the case, they try to commit  
20 another case. So they're not going to get to do that.  
21 They're going to have to follow the United States of America's  
22 rules and that rule is you either move for a continuance or  
23 when I'm through with this trial we're picking your jury.

24                  (Pause.)

25                  THE COURT: So Mr. Floyd, would you like to continue

1 the case?

2 THE DEFENDANT: Under special appearance and special  
3 request, I would like to continue the case under *sui juris*.

4 THE COURT: I don't know what that is, but you  
5 would -- the main words I'm hearing are you want the case  
6 continued to the next term.

7 THE DEFENDANT: The flesh and blood is wanting to  
8 continue the case until the next term.

9 THE COURT: All right. Now, let's get -- let's get  
10 this out -- before I rule -- and I'll rule on that in just a  
11 minute. What's the counsel issue that you have with counsel?  
12 Is it because she's not wanting to go along with some of these  
13 special things or is it -- what's your problem that you want  
14 to dismiss her?

15 THE DEFENDANT: No full disclosure.

16 THE COURT: How do you feel about this case going  
17 forward?

18 MS. GEBRE-EGZIABHER: Your Honor, I'm happy to help  
19 Mr. Floyd in any capacity that I can. I think if these  
20 matters are going to touch on issues related to  
21 attorney/client privilege, I would ask that the government be  
22 asked to step out. But I'm happy to communicate with the  
23 Court freely about what's happened.

24 THE COURT: Okay. Why don't you all step out and  
25 let's have a hearing. We'll put it on the record, but outside

1 the presence of the government. We'll seal the record in case  
2 we need to use it for anything else, but it will not be  
3 available to the government.

4 MR. BAILEY: Yes, sir.

5 (Government counsel exited the courtroom.

6 Proceedings sealed.)

7 \*\*\*\*\*

8 (Government counsel returned to the courtroom.

9 Proceedings held in open court.)

10 THE COURT: All right. We're going to come back  
11 here -- and you all don't need to necessarily come down here  
12 for this. You can have somebody from the U.S. Attorney's  
13 Office fill in on this -- on Tuesday at 9:00 a.m., next  
14 Tuesday. This defendant is going to come in here and counsel  
15 is going to come in here or a representative from her office  
16 will be here to decide whether he is going to keep counsel and  
17 maybe we'll find out about a plea, but we're going to find out  
18 the counsel issue. And once we get all that done, then we can  
19 talk about the peremptory setting.

20 I am continuing this case at the present time until  
21 at least the next term in May for the purpose of -- and what  
22 date were you looking at for a peremptory?

23 MR. BAILEY: It was either the second or third week  
24 of May.

25 THE COURT: Okay. So we'll be doing -- that's

1 likely to occur in those periods of time. Probably the --  
2 probably more like the third than the second, but we'll  
3 probably do it one of those weeks in May if it goes to trial,  
4 so you all get ready for that.

5 I'm continuing that until the May criminal term,  
6 this case, based on the defendant's request that he needed  
7 more time and that he -- that the person that he is wanted a  
8 continuance.

9 Am I saying that right, Mr. Floyd?

10 THE DEFENDANT: I'm sorry, reask that question.

11 THE COURT: You wanted a continuance, some part --  
12 you wanted it continued. You were trying -- you didn't want  
13 to give up any -- I promise you you'll give up no taxpayer  
14 protester rights by moving for a continuance.

15 THE DEFENDANT: Can I ask you a question?

16 THE COURT: Yes, sir.

17 THE DEFENDANT: I'm trying to be any of the above  
18 that you're speaking if you don't mind. I am here to settle  
19 the matter --

20 THE COURT: I understand.

21 THE DEFENDANT: -- in any way possible that is  
22 pleasurable if you...

23 THE COURT: I understand.

24 THE DEFENDANT: If I can ask you that to settle the  
25 matter both sides, everything and all.

1                   THE COURT: Well, that's what they're offering in a  
2 plea. They're trying to settle the matter that way. What  
3 you're saying is --

4                   THE DEFENDANT: I'm offering. I'm offering to  
5 settle.

6                   THE COURT: -- you also -- a good way to settle it  
7 would be if you decide to keep your lawyer is to tell her what  
8 you want to offer and then offer it to the government and they  
9 might take it and they might not.

10                  THE DEFENDANT: I can appreciate that.

11                  THE COURT: That's how you negotiate. The problem  
12 is that if you do your own negotiations, and you certainly can  
13 if you end up being your own counsel, you have to be careful  
14 what you tell them because they don't -- they can use it.  
15 That's why most defendants don't talk to the government  
16 because everything you can and will say can and will be used  
17 against you and that's why we have lawyers standing between  
18 defendants and the government. Okay.

19                  So on next Tuesday we're going to find out whether  
20 this gentleman is going to keep counsel and maybe we'll find  
21 out about getting something worked out.

22                  MR. BAILEY: Yes, sir.

23                  THE COURT: But we're going to continue the case  
24 based on the defendant's lack -- he said he's not prepared to  
25 go yet, needs more time, and asked for a continuance. And so

1 I'm going to grant that motion.

2 THE DEFENDANT: Not a motion.

3 THE COURT: I'm going to grant that request.

4 THE DEFENDANT: Not a motion.

5 THE COURT: I'm going to grant that request and  
6 continue this case until the May term. I find that based upon  
7 what I've heard today, the government and the defendant's  
8 rights to a speedy trial are overcome by the necessity that  
9 this case be continued until the May term in order for the  
10 defendant to have a fair hearing on this matter.

11 Does that sound good to you, Mr. Floyd?

12 THE DEFENDANT: Once again, under special -- under  
13 special appearance.

14 THE COURT: All right.

15 THE DEFENDANT: Greatly appreciate your honesty and  
16 concern.

17 THE COURT: Yes, I understand. I understand it.

18 All right. I remain guarded on whether we get this  
19 worked out on Tuesday, but hopefully we'll be able to do that  
20 and get that done. At least -- at least I think we're doing  
21 all we can to help Mr. Floyd out here and that's all we can  
22 do, so...

23 MR. BAILEY: Your Honor, if I may be heard for a  
24 minute?

25 THE COURT: Yes.

1                   MR. BAILEY: Just based on docket items 33 and 34,  
2 I'd ask if you could remind Mr. Floyd that if he is  
3 represented by counsel, he's not allowed to file anything pro  
4 se with the clerk's office as a condition of his pretrial  
5 release.

6                   THE COURT: Yeah, don't be -- you can't file any --  
7 you really aren't supposed to file anything with the Court.  
8 Now, I know people are giving you stuff and they say file  
9 this, that will show them, but that doesn't work. None of  
10 those things are working. I mean, 33 and 34 are in there and  
11 they don't work.

12                  THE DEFENDANT: May I ask a question?

13                  THE COURT: Yes.

14                  THE DEFENDANT: I'm not -- is it possible for me to  
15 file anything pro se?

16                  THE COURT: You can file them, but -- you can file  
17 them, but it's a condition of bond that you do it through --

18                  THE DEFENDANT: It's an impossibility for me to  
19 franchise myself.

20                  THE COURT: You're to do it through your attorney.  
21 If you're representing yourself --

22                  THE DEFENDANT: Provided I had one at this point.

23                  THE COURT: -- you can file it if you want to.

24                  Huh?

25                  THE DEFENDANT: Provided I had one at this point.

1 We've got to discuss it and determine if that's what we're  
2 doing.

3 THE COURT: That's right. So don't file anything  
4 else until we figure out whether you've got a lawyer or not.  
5 If you're representing yourself, you can -- you can file  
6 anything you want to file.

7 THE DEFENDANT: So I'm having a little encumbrance  
8 of due process rights here?

9 THE COURT: I would say no.

10 THE DEFENDANT: I just want to understand.

11 THE COURT: All right. Well, speak with your  
12 excellent attorney. It sounds like she gets along with you  
13 and likes you so --

14 THE DEFENDANT: For the record -- once again for the  
15 record, if you don't mind me asking once again for the record,  
16 that we're in a limbo until Tuesday that we decide on this.

17 THE COURT: Number one, she is your -- she is at  
18 this moment your lawyer until I say she's not your lawyer.  
19 Okay.

20 THE DEFENDANT: Okay. So --

21 THE COURT: You're appointed so she is your lawyer.

22 Now, on Tuesday -- I understand that there's -- that  
23 there are issues. You made that clear and -- as to what  
24 issues y'all are dealing with, and she's made that clear. But  
25 it does sound like for people that aren't getting along, y'all

1 get along real well.

2                   So let me just say this. Let me just say this.  
3 She's your lawyer until Tuesday and then we'll see what's  
4 going to happen. But you're going to have -- this case -- as  
5 long as this case is going on, there are -- there's several  
6 things that can happen.

7                   Number one, she continues as your lawyer. Number  
8 two, you convince me to appoint somebody else as your lawyer,  
9 but you don't get to pick. It will be from -- it will be from  
10 a pool of excellent attorneys. Number three, you represent  
11 yourself. Those are the only three ways we go through this  
12 process.

13                  Now, I don't know what's going on out in the la la  
14 land of those tax protesters that talk to you, but this is a  
15 real court here and we're going to try it like a real court.

16                  THE DEFENDANT: So how do I -- can I ask you another  
17 question? How do I put in the record as I want it to be in  
18 the record, without it being changed or altered, notices to  
19 motions, affidavits to motions? How do I put this in the  
20 record without being cumbent?

21                  THE COURT: If you --

22                  THE DEFENDANT: Without an attorney or a lawyer.

23 Can you explain that to me?

24                  THE COURT: If you can't get your attorney to file  
25 those motions for you, then you'll have to wait until you're

1 by yourself, representing yourself, and then you can file  
2 motions. The Court will deal with them depending on what they  
3 are. If they're about real things in this case, the Court  
4 will -- some of it it will grant, some of it it won't. If  
5 they're going to be -- if it's just this tax protester stuff  
6 that they give people to file -- every judge in this district  
7 has gotten up to here full of those things. They have denied  
8 them. It's gone up on appeal. They've lost all the appeals.  
9 They have zero victories. I've never seen a group that  
10 continues to get looked at that is so bad at winning cases.  
11 Now, they might win them out in the -- in somebody's living  
12 room if they got some special court out there that's indicting  
13 people, but they're not -- the real courts, it's not good  
14 stuff.

15 And Mr. Floyd, you seem like an awfully nice guy and  
16 I really hate that you -- that you're listening to bad advice.  
17 But you decide what you want to do. Okay. You decide what  
18 you want to do. You've got a really good lawyer. You know,  
19 sometimes you can draw an okay lawyer when they're appointed.  
20 You got a really good one. And it sounds like she actually  
21 likes you. So you might want to -- you might want to talk --  
22 at least talk to her before you get a different one.

23 THE DEFENDANT: So can I ask you a question?

24 THE COURT: Yes, sir.

25 THE DEFENDANT: Can I get this lady to represent the

1 flesh and blood in a courtroom, the flesh and blood, not an  
2 entity, and get what I -- with full disclosure and get what I  
3 want?

4 THE COURT: I don't know what you want so I can't  
5 answer that question. But let me just say this. All we can  
6 do is represent the flesh and blood. Now, I know the Supreme  
7 Court has said corporations are persons. But as I think it  
8 was Teddy Roosevelt said, the problem with corporations is it  
9 doesn't have a soul to damn or an ass to kick. But the  
10 Supreme Court said they're people so they are -- we have to  
11 treat them as people. But the only people I've ever seen that  
12 come into court with a chance to go to jail are flesh and  
13 blood human beings. And so that's what you're --

14 THE DEFENDANT: I can appreciate that. Can I ask  
15 you another question?

16 THE COURT: So that's what you're --

17 THE DEFENDANT: So as long as this lady will do my  
18 desires --

19 THE COURT: Well, it depends on what it is. She's a  
20 lawyer and there are legal things that she has to be -- she  
21 has to follow so I can't -- y'all talk about it. You're going  
22 to let me know on Tuesday. She'll be straight with you. You  
23 be straight with her.

24 THE DEFENDANT: Right. But if she can just --

25 THE COURT: You all figure it out. You all figure

1 it out.

2 THE DEFENDANT: It's okay if she discloses  
3 everything 100 percent, we will have no problem.

4 THE COURT: If she -- well, she'll disclose  
5 everything -- whether she's going to file everything you want  
6 filed, I don't know. But she'll definitely be honest with you  
7 and tell you what she thinks and you'll tell her what you want  
8 to do. And then y'all figure it out and we'll talk Tuesday at  
9 9:00 again. Okay.

10 All right, Mr. Floyd. This case is continued.  
11 Thank you. We're done for the day.

12 MR. BAILEY: Thank you, Your Honor. Appreciate your  
13 time.

14 (End of proceedings at 2:42 p.m.)

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1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF NORTH CAROLINA  
3 CERTIFICATE OF REPORTER

4  
5  
6 I, Cheryl A. Nuccio, Federal Official Realtime Court  
7 Reporter, in and for the United States District Court for the  
8 Western District of North Carolina, do hereby certify that  
9 pursuant to Section 753, Title 28, United States Code, that  
10 the foregoing is a true and correct transcript of the  
11 stenographically reported proceedings held in the  
12 above-entitled matter and that the transcript page format is  
13 in conformance with the regulations of the Judicial Conference  
14 of the United States.

15  
16 Dated this 30th day of May 2017.

17  
18  
19 s/Cheryl A. Nuccio  
20 

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Cheryl A. Nuccio, RMR-CRR  
21 Official Court Reporter  
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